

REMARKS

The Examiner has stated:

"3. Claims 24-26, 28, 29, 31, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Rabasco et al (US 2002/0099113).

Pregozen discloses a method for making a moist wipe for delivering a cationic functional agent in an aqueous medium (See column 1, lines 10-15) to an animate or inanimate surface for a desired efficacy (see column 3, lines 21-22), which comprises forming a bonded non-woven web comprising cellulosic fibers (See column 4, lines 63-68) using non-woven binders (See column 5, lines 2-4), and adding about two to five times the dry weight of the web an aqueous imbuement carrying a cationic functional agent such as polymeric cationic biocide having molecular weight of 1000-1400 (See column 3, lines 61-63) or monomeric cationic biocide such as cetylpyridinium chloride (See column 7, lines 19, 27-35) at a concentration of about 0.03-0.24 % weight (active basis) of the aqueous composition (which is less than 6 milli-equivalents per liter) (See column 4, lines 10-13).

Pregozen fails to teach that an anionic surface charge of the web containing cellulosic fibers is not greater than 1.2 meq per kilogram (Claim 24); a non-woven binder contains non-ionic surfactant (Claims 26, 29); the monomeric cationic biocide is benzalkonium chloride (Claims 31, 32).

Rabasco et al teach that sufficient anionic character of non-woven binders inactivates cationic biocides (See [0030]). In other words, an anionic surface charge of the web containing cellulosic fibers is result-effective parameter.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the surface of the web containing cellulosic fibers in Pregozen for delivering cationic biocides with less than sufficient anionic character since Rabasco et al teach that sufficient anionic character of non-woven binders inactivate cationic biocides.

It is held that it is not inventive to discover the optimum or workable ranges of result-effective variables by routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). See also *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have determined the optimum values of anionic surface charge (including those of claim 24) in Pregozen in view of Rabasco et al through routine experimentation in the absence of a showing of criticality.

As to claims 26, 29, Rabasco et al further teach that non-woven binders (See [0020]) can be formulated as stable polymer emulsion using various surfactants such as non-ionic surfactant (See [0030]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated non-woven binders in Pregozen using non-ionic surfactant with the expectation of providing the desired stable polymer emulsion, as taught by Rabasco et al.

As to claims 31, 32, Rabasco et al teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide (See [0024]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used instead of cetylpyridinium chloride biocide in Pregozen since Rabasco et al further teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide, and the selection of any of these known material as cationic biocide in Pregozen would be within the level of ordinary skill in the art.”

Applicants submit that the Examiner has not met the burden of establishing a *prima facie* case of obviousness. Consider *In re Lee*: “Board of Patent Appeals and Interferences improperly relied upon ‘common knowledge and common sense’ of person of ordinary skill in the art to find invention of patent application obvious over combination of two prior art references . . .” 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). The CAFC went on to say: “In its decision on Lee’s patent application, the board rejected the need for ‘any specific hint or

suggestion in a particular reference' to support the combination of the Northrup and Thunderchopper references. Omission of a relevant factor required by precedent is both legal error and arbitrary agency action." *Id.* at 1434. The applicants respectfully invite the Examiner to cite column and line number from within the cited references as to where a suggestion to combine may be found.

In order to place the case in better condition for appeal, the applicants would also like to bring to the Examiners attention: "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching, suggestion or incentive supporting the combination." *Carella v. Starlight Archery and Pro Line Co.*, 804 F.2d 135, 140, 231 USPQ 644, 647 (Fed. Cir. 1986) (citing *ACS Hosp. Syss., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed Cir. 1984)).

Even if the Examiner had created a *prima facie* case of obviousness, which applicants in no way concede, Applicants rebut. With respect to Pregozen, the document must be considered in its entirety. The Examiner relies on the mention of cetylpyridinium chloride in col. 7. The applicants invite the Examiner to read further down col. 7 to lines 42-45, where Pregozen concludes:" In each case the moistened wipes obtained had an unacceptable slippery feel which rendered them unsuitable for marketing." So, Pregozen teaches away from monomeric cationic biocides. With respect to Rabasco, Rabasco concerns putting cationic biocide in latex. Paragraph [0030] mentions using the latex to formulate paper coatings and nonwoven binders and the like. Here, an embodiment of the present invention is to bond the fibers of the paper with a latex, cure the latex, and then impregnate the paper with an aqueous cationic biocide. Whether the latex used contains a cationic biocide is irrelevant, because the function of the biocide of the present invention is to transfer to a user's skin. Once the latex is cured, it is water insoluble and the cationic biocide is encapsulated in this water insoluble matrix, making it essentially unavailable for extraction into an aqueous solution. That is why the paper of the present invention is further impregnated with aqueous cationic biocide. The Examiner characterizes paragraph [0030] to mean: "Rabasco et al teach that sufficient anionic character of non-woven binders inactivates cationic biocides (See [0030]). In other words, an anionic surface charge of the web containing cellulosic fibers is result-effective parameter." Applicants respectfully disagree. Paragraph [0030] states in relevant part: " In addition, the polymer

emulsion compositions of this invention can be blended or formulated with other **raw materials** for use in preparation of adhesives, architectural coatings, paper coatings, nonwoven binders, etc., **provided that those raw materials do not impart sufficient anionic character to** inactivate the cationic biocides. For example, although the polymer emulsion compositions of this invention may be used neat for adhesive applications, such polymer emulsion compositions are often formulated depending upon the specific end use.“ [Emphasis added] What this means is that when formulating Rabasco’s latex into a paper coating, non-woven binder or an adhesive, don’t add too much anionic ingredients, like anionic surfactants, for example, because the biocide could be inactivated, and the latex is no longer protected. Rabasco is completely silent about the anionic nature of the paper or non-woven fiber to which such a paper coating or non-woven binder could be applied. Rabasco then goes on to describe raw materials that may be used to formulate an adhesive in paragraphs [0031] – [0042]. None of them mention fibers.

So, even if Pregozen didn’t teach away, there is no motivation to combine it with a reference, Rabasco, that only teaches putting biocide in a latex.

The examiner further states:

“4. Claims 27, 30, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Rabasco et al (US 2002/0099113), further in view of Mochizuki et al (US 4,675,347).

Pregozen in view of Rabasco et al, as applied above, fail to teach that non-woven binders can be formulated using cationic surfactant (Claims 27, 30); the monomeric cationic biocide is benzethonium chloride (Claim 33).

As to claims 27, 30, Mochizuki et al teach that a cationic surfactant and/or nonionic surfactant is suitable for formulating stable non-woven binders (See column 3, line 66) containing cationic antimicrobial agent (See column 7, lines 48-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a cationic surfactant and/or nonionic surfactant in formulating non-woven binders of Pregozen in view of Rabasco et al since Mochizuki et al teach that a cationic surfactant and/or nonionic surfactant is

suitable for formulating stable non-woven binders (See column 3, line 66)
containing cationic antimicrobial agent.

It is held that the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious); *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

As to claim 33, Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions (See column 5, lines 55, 59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used benzethonium chloride as cationic biocide in Pregozen in view of Rabasco et al since Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions.”

Even if the Examiner had created a *prima facie* case of obviousness, which applicants in no way concede, Applicants rebut. With respect to Mochizuki, see the *in re Lee* comments above. Further, Mochizuki, like Rabasco, teaches putting cationic biocide in a latex. The aqueous cationic biocide of the present invention is not a latex. So, Mochizuki does not cure the defects of Pregozen and Rabasco.

In view of the foregoing comments, Applicants respectfully request reconsideration.

Respectfully submitted,



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